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APPLICATION OF SOUTHWESTERN)	BEFORE THE PUBLIC UTILITY
ELECTRIC POWER COMPANY FOR)	COMMISSION OF TEXAS
AUTHORITY TO CHANGE RATES)	
)	REFERRED TO THE STATE OFFICE
)	OF ADMINISTRATIVE HEARINGS

SIERRA CLUB'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

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I. INTRODUCTION

Southwestern Electric Power Company (“SWEPCO” or the “Company”) has not learned its lesson. Just three years after charging customers \$700 million to install pollution controls at four coal-burning power plants¹—three of which will retire early or convert to burning gas, forcing customers to pay millions in stranded costs²—SWEPCO has decided to continue spending further customer money on its remaining coal units without presenting the Commission with any economic justification and, in some cases, attempting to evade Commission oversight altogether. The Company does not dispute that it intends to spend another \$26.8 million on yet another coal plant retrofit project at the Flint Creek power plant—this time, to comply with the U.S. Environmental Protection Agency’s (“EPA’s”) coal ash and wastewater regulations—that it has already invested millions of dollars in the retrofit, or that a substantial portion of those costs could be avoided by retiring the plant before 2028.³ Nevertheless, the Company insists that its

¹ *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at Finding of Fact (“FOF”) No. 19 (Mar. 19, 2018).

² Dolet Hills will retire no later than December 2021, and Pirkey will retire by 2023. Under the current depreciation schedule, the Welsh units will retire in 2037 and 2042; but SWEPCO has stated that it will cease coal operation at Welsh in 2028 and is currently considering whether to convert the units to gas or to retire them outright. *See* Sierra Club Exhibit 1A (Unredacted Highly Sensitive Direct Testimony and Exhibits of Devi Glick (under seal) (filed with PUCT March 31, 2021) (Section 5 Redacted) [hereinafter “Direct Testimony of Glick”]) at 010; TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 12; SWEPCO Ex. 7 (Direct Testimony of McMahon) at 7, Table 2.

³ SWEPCO Ex. 1 (Rate Filing Package Schedules & Workpapers Volumes 1 through 11[hereinafter “Application”]) at 3439, Schedule H 5-3.b; Sierra Club Exhibit 1A (Direct Testimony of Glick) at 128 (exhibiting SWEPCO Response to Sierra Club Request 3-2) (“[A]n option is available in the rule to allow the plant to cease combustion of coal (i.e., retire or repower) and to continue to operate without further ELG-related retrofits until no later than December 31, 2028.”); *see also* SWEPCO’s Objection and Mot. to Strike the Testimony of Devi Glick on Behalf of Sierra Club at 3 (Apr. 9, 2021).

“decision to retrofit Flint Creek and any associated investment” are irrelevant until some future case after SWEPCO has already completed the project and it “requests to include such investment in its rate base.”⁴ That decision and the other coal spending proposed in this case will likely harm Texas customers, who are already facing significant rate increases due, in part, to the accelerated depreciation of SWEPCO’s previous coal plant retrofits that are no longer used and useful.

In this proceeding in which SWEPCO is requesting an increase in base rates of 30.31% over adjusted Texas retail test year rate revenue,⁵ the Commission must closely scrutinize every dollar of the Company’s proposed spending. Unfortunately, the Proposal for Decision does not reflect adequate scrutiny for SWEPCO’s spending related to its existing solid fuel generating units and declines to require SWEPCO to present any competent evidence in support of some of its test year spending in violation of Texas law. To protect customers from SWEPCO’s wasteful spending, Sierra Club takes exception to the Proposal for Decision on these four points:

First, the Commission should reject the conclusion of the Proposal for Decision and disallow the test year operations and maintenance (“O&M”) and capital spending at the Dolet Hills plant. SWEPCO presented no evidence of its own to support the level of capital and O&M spending for Dolet Hills, and relied entirely on its undocumented, unsubstantiated belief that its co-owner would not propose imprudent spending, an entity that is not regulated by the

⁴ SWEPCO’s Objection and Mot. to Strike at 3.

⁵ SWEPCO Ex. 1 (Application) at 8, SWEPCO’s Petition and Statement of Intent to Change Rates.

Commission.⁶ In doing so, SWEPCO failed to meet its burden of proof under Texas law, which requires a regulated utility to justify the expenses it seeks to charge to customers.⁷ In addition, despite advancing the end-of-life date for Dolet Hills by two decades, SWEPCO has not re-evaluated and adjusted downward the level of spending at this plant. Customers should not be asked to pay costs that are not reasonable and necessary to operate this plant through its imminent retirement, a proposition that SWEPCO admits is “logical,”⁸ but nevertheless failed to accomplish. Nonetheless, the Proposal for Decision approves Dolet Hills test year spending without requiring SWEPCO to demonstrate the prudence of those expenses.

Second, the Commission should reverse the Proposal for Decision and deny SWEPCO’s proposed test year spending at the Flint Creek and Welsh plants because the Company has not provided any empirical evidence supporting the continued investment of capital or O&M expenses at these plants, and therefore failed to meet its burden of proof. Despite seeking approval for tens of millions of dollars at these two plants in this case, SWEPCO has not provided a unit disposition study, net present value calculation, or any comparable quantification purporting to show that customers would benefit from the retention of Flint Creek or Welsh through and beyond the test year.⁹ The Commission should deny the test year spending for these

⁶ SWEPCO Ex. 7 (Direct Testimony of McMahon) at 5:16-18; Tr. at 159:10-12 (McMahon Cross) (May 19, 2021); Tr. at 160:4 (McMahon Cross) (May 19, 2021) (“it’s the operator’s decision on how to deploy that funding”).

⁷ Public Utility Regulatory Act, Tex. Util. Code Ann. § 36.006 (amended 2019) (PURA).

⁸ Tr. at 89:11-90:1 (Brice Cross) (May 19, 2021).

⁹ *See* Sierra Club Exhibit 1A (Direct Testimony of Glick) at 042; *see also* Sierra Club Offer of Proof Ex. 1 (Unredacted Highly Sensitive Direct Testimony and Exhibits of Devi Glick (under seal) (filed with PUCT March 31, 2021)) at 031-040; *see also id.* at 143 (exhibiting SWEPCO Response to Sierra Club Request 1-5, HS Attachment 6).

plants on that basis alone. Sierra Club, on the other hand, has provided calculations that rely on SWEPCO's own data projections, that show that these plants, when they operate at all, will do so as high-cost peaking units, and that customers would be better off if SWEPCO retired both Flint Creek and Welsh plants in the near term and replaced them with alternative resources. There is no record evidence that supports approval of the test year spending at Flint Creek or Welsh, and these expenses must be disallowed. The Proposal for Decision approves this spending by citing to unit disposition studies that SWEPCO performed in 2011, a full decade ago, which is not competent evidence of the economics of these plants in the test year at issue.

Third, to protect Texas customers from the creation of yet more stranded asset costs, the Commission should direct the ALJs to conduct further proceedings regarding the prudence of its avoidable Effluent Limitations Guidelines/Coal Combustion Residuals ("ELG/CCR") costs at Flint Creek before the Company proceeds with incurring those costs. While the Proposal for Decision finds that SWEPCO's decision to retrofit Flint Creek to comply with EPA's ELG/CCR requirements is not at issue in this case, the Company has indisputably committed to those retrofits and has already incurred significant costs. Given SWEPCO's history of incurring significant environmental retrofit costs and then almost immediately stranding those generation assets,¹⁰ the Commission should exercise its authority to evaluate SWEPCO's ELG/CCR retrofit

¹⁰ See *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Proposal for Decision at 44 (Sept. 22, 2017) ("In this case the ALJs find that the contemporaneous documentation is inadequate to show reasonable action by a utility manager[.]"). In its Order on Rehearing, at 3-5, the Commission reversed the ALJs on the ultimate conclusion of SWEPCO's prudence showing on the contemporaneous evidence standard, though it did not rely on any of SWEPCO's own contemporaneous documentation in reaching that holding. *Id.*

decisions now, before customers are once again forced to bear the costs of the Company's flawed resource planning decisions.

Finally, to avoid the same resource planning mistakes at Welsh, the Commission should require SWEPCO to demonstrate the prudence of any gas conversion project before the Company makes that decision. The Proposal for Decision declined to adopt this recommendation, but the Commission should exercise its authority to require preapproval of any such conversion project to protect Texas customers.

In sum, and as further supported below, Sierra Club respectfully asks that the Commission determine the following:

1. SWEPCO has failed to meet its burden for approval of O&M and capital maintenance costs for Dolet Hills as the Company has not re-evaluated the level of spending at this plant after advancing its retirement by decades and, as an independent legal ground, SWEPCO improperly relied exclusively on the uncorroborated, undocumented judgment of on a non-regulated entity to support its proposed test year expenses. Accordingly, the Commission should disallow the approximately \$14 million in test year capital and O&M spending at Dolet Hills. At a minimum, the Company's test year expenses for Dolet Hills should be reduced by \$3.5 million, which represents the known and measurable reduction for the costs that SWEPCO will not incur as a result of its decision to retire Dolet Hills at the end of the peak demand season in 2021.
2. SWEPCO has failed to meet its burden for approval of test year O&M and capital maintenance costs for the Flint Creek and Welsh plants as the Company presented no empirical evidence demonstrating that customers benefit from the continued operation of

these plants. Thus, the Commission should disallow the \$9.8 million of O&M and \$3.4 million in capital spending proposed for Flint Creek, and the \$28.3 million of O&M and \$6.8 million in capital spending for Welsh included in the test year.

3. The Commission should reverse the Proposal for Decision, and direct the ALJs to conduct further proceedings to review whether SWEPCO's decision to retrofit Flint Creek and to incur the ELG/CCR costs was prudent.
4. The Commission should exercise this authority for the benefit of customers by amending the Proposal for Decision and ordering the Company to present robust analysis for any conversion of the Welsh plant before those costs are incurred.

V. RATE BASE/INVESTED CAPITAL [PO Issues 4, 5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 36, 37, 38, 39, 40, 41, 50, 67, 68, 69, 70, 71]

A. Transmission, Distribution, and Generation Capital Investments [PO Issues 4, 5, 10, 11, 13, 14, 15, 16]

4. New Generation Capital Investment

a. Dolet Hills Test-Year Investment

The Proposal for Decision concludes that SWEPCO “presented evidence to make a *prima facie* showing of the prudence of its test-year capital investment at Dolet Hills.”¹¹ The Commission should reject that conclusion and disallow recovery of SWEPCO's test-year spending at Dolet Hills for two independent reasons. First, contrary to the Proposal for Decision, SWEPCO failed to submit *any* analysis demonstrating the reasonableness of the Company's continued investments at Dolet Hills, and instead relied entirely on its belief that the expenses

¹¹ Proposal for Decision (“PFD”) at 69.

calculated by the operator of Dolet Hills were likely to be prudent—a belief not supported by any documentation, and one that is unreviewable by this Commission as the operator is not regulated by the Commission.¹² Second, even if SWEPCO had demonstrated the prudence of some of its test year expenses (it did not), the Commission should adjust the utility’s revenue requirement because Dolet Hills will be permanently retired in December 2021 (two decades earlier than SWEPCO projected), and will not be used or useful during the post-test year adjustment period. Customers should not be asked to pay costs that are not reasonable and necessary to operate this plant through its imminent retirement.

i. SWEPCO has failed to demonstrate the prudence of its continued investments in the soon-to-be retired Dolet Hills power plant.

The Commission should disallow the entirety of SWEPCO’s \$14 million test-year capital and O&M spending at Dolet Hills because the Company admittedly failed to submit *any analysis* demonstrating the prudence of “each dollar” spent at the plant.¹³ In concluding otherwise, the Proposal for Decision makes several errors.

¹² SWEPCO Ex. 7 (Direct Testimony of McMahon) at 5:16-18; Tr. at 159:10-12 (McMahon Cross) (May 19, 2021); Tr. at 160:4 (McMahon Cross) (May 19, 2021) (“it’s the operator’s decision on how to deploy that funding”).

¹³ SWEPCO Reply at 10 (asserting that SWEPCO “has been denied . . . the opportunity to present rebuttal testimony” relating to the prudence of the Dolet Hills capital and O&M expenses); *see also Texas Industrial Energy Consumers v. Pub. Util. Comm’n of Texas*, 608 S.W.3d 817, 827 (Tex.App.–Austin 2018) (quoting *Entergy Gulf States, Inc. v. Pub. Util. Comm’n*, 112 S.W.3d 208, 214 (Tex.App.–Austin 2003, pet. denied) (denying recovery of costs where the failed to submit contemporaneous documentation or “retrospective *analysis*” demonstrating the prudence and reasonableness of “each dollar” of its continued investment in a generating facility) (emphasis in original); *Coalition of Cities for Affordable Util. Rates v. Pub. Util. Comm’n of Tex.*, 798 S.W.2d 560, 563 (Tex. 1990), *receded from on other grounds by Barr v. Resolution Trust Corp. ex rel. Sunbelt Federal Sav.*, 837 S.W.2d 627, 629 (Tex. 1992).

First, the Proposal for Decision departs from binding precedent. As its primary support for allowing the Dolet Hills test-year capital and O&M expenses, the Proposal for Decision points to SWEPCO's inclusion in its Application of mandatory rate schedules listing the amount and general categories of test-year capital and O&M expenses at each plant.¹⁴ But SWEPCO cannot demonstrate prudence by "simply opening its books to inspection."¹⁵ Rather, the utility bears the burden of documenting "its decision-making process," including its "investigation of all relevant factors and alternatives," so that the Commission is able to evaluate the prudence and reasonableness of "each dollar" of its expenditure.¹⁶ Merely listing the amount of any spending, and providing a general description of the project, cannot substitute for the reasoned decision-making process required by precedent.

In any event, SWEPCO's rate schedules do not actually support the prudence of the Dolet Hills expenses. The Proposal for Decision correctly notes that SWEPCO's capital spending schedule include references to whether the Company conducted cost-benefit analyses for each Dolet Hills expense,¹⁷ but none of the underlying analyses are in the record, so it is impossible to evaluate the prudence of those costs or whether the Company evaluated the relevant factors or alternatives to those investments.

¹⁴ PFD at 66.

¹⁵ *Entergy Gulf States, Inc. v. Pub. Util. Comm'n of Tex.*, 112 S.W.3d 208, 214 (Tex.App.—Austin 2003).

¹⁶ *Texas Industrial Energy Consumers*, 608 S.W.3d at 827.

¹⁷ PFD at 65; Finding of Fact ¶ 29.

The Proposal for Decision's references to SWEPCO's O&M schedules is similarly misplaced.¹⁸ Schedule H-4 lists the major O&M projects undertaken during the test year by plant, but does not even reference Dolet Hills. Schedule H-3, which provides historical SWEPCO generation O&M, lists expenses across SWEPCO's generation fleet, but similarly does not identify any expenses specific to Dolet Hills. And Schedule H-1.2 provides only generic descriptions of the O&M expenses incurred by Dolet Hills during the test year, using terms like "steam expense," "misc steam expenses," and "maintenance of boiler plan" without any explanation. As with SWEPCO's capital investments at Dolet Hills, it is simply not possible for the Commission to independently evaluate the prudence of any of the O&M costs listed in the utility's rate schedules.

Second, the Proposal for Decision is premised on irrelevant evidence. As support for its conclusion that SWEPCO's Dolet Hills expenses were prudent, for example, the Proposal for Decision notes that "Mr. McMahon testified that SWEPCO uses multiple processes to ensure that its generation plant O&M expenses are reasonable."¹⁹ But Mr. McMahon admitted that those processes do not apply to Dolet Hills expenses. Indeed, "CLECO is responsible for the operation and maintenance of the plant,"²⁰ and SWEPCO does not "have a direct role" in making any of those capital or O&M investment decisions.²¹ Mr. McMahon simply does not provide any analysis supporting the prudence of SWEPCO's Dolet Hills expenses.

¹⁸ *Id.*

¹⁹ Proposal for Decision at 66.

²⁰ SWEPCO Ex. 7 (Direct Testimony of McMahon) at 5:16-18.

²¹ Tr. at 159:10-12 (McMahon Cross) (May 19, 2021); *see also* Tr. at 160:2-5 ("ultimately, it's the operator's decision on how to deploy that funding.").

Despite Mr. McMahon's admission, the Proposal for Decision reasons that:

When read in proper context, Mr. McMahon also made clear that SWEPCO management provides "input and feedback" to CLECO regarding its investment decisions and that based on "communications with plant management and others at CLECO," he believed that CLECO had acted prudently in making capital and O&M investment decisions that would get the plant safely and reliably to the end of its life.²²

That is incorrect. As an initial matter, the Proposal for Decision mischaracterizes Mr.

McMahon's testimony. In fact, he testified that SWEPCO has "*opportunities* to offer our input and feedback, but ultimately, it's the operator's decision on how to deploy that funding."²³ It should go without saying that having the opportunity to provide feedback is quite different than actually conducting and documenting a reasoned decision-making process. Moreover, Mr. McMahon's subjective "belief" about the prudence of Cleco's Dolet Hills investments is plainly not the kind of "documentation of [SWEPCO's] decision-making process" required to allow the Commission to independently evaluate whether the utility conducted a "reasoned investigation of all relevant factors and alternatives before" investing \$14 million in the continued operation of Dolet Hills.²⁴

The Proposal for Decision's reliance on the Commission's decision in Docket No. 46449 is similarly misplaced. As with Flint Creek and Welsh, the Proposal for Decision points to the evidence that SWEPCO submitted in the *prior* rate case to excuse the Company's failure to produce any evidence in *this rate case* demonstrating the prudence of its decision to incur test

²² Proposal for Decision at 67 (citing Tr. At 159-60).

²³ Tr. at 160:2-5 (emphasis added).

²⁴ *Id.* (emphasis added).

year expenses at Dolet Hills.²⁵ Evidence relating to SWEPCO's 2012 decision to invest \$56 million in environmental retrofits at Dolet Hills is simply not relevant to whether the utility "conducted a reasoned investigation of all relevant factors and alternatives" to its continued investment in 2020, "at the time" it decided to invest another \$14 million in the plant.²⁶

It is worth noting that even in Docket No. 46449, SWEPCO never submitted—and in fact, never even reviewed—*Cleco*'s underlying economic analysis regarding the prudence of the continued capital and O&M investments at Dolet Hills. Indeed, SWEPCO did not "obtain or review any" of the economic analyses that Cleco presented or relied upon in deciding to retrofit Dolet Hills.²⁷ Cleco's purported Dolet Hills "study," which the Proposal for Decision references,²⁸ was not an economic analysis of the costs and benefits of retrofitting and continuing to operate Dolet Hills, but an "engineering" study examining only the technological options available for complying with the environmental regulations at issue in that case.²⁹ Thus,

²⁵ PFD at 68 (citing testimony of Mr. Franklin regarding SWEPCO's 2014 decision to invest \$56 million in environmental retrofits at Dolet Hills).

²⁶ *Gulf States Util. Co. v. Pub. Util. Comm'n of Tex.*, 841 S.W. 2d, 476 (Tex.App.—Austin 1992).

²⁷ See Docket No. 46449, Sierra Club Ex. 27 at 1 (Aff. of Mr. Brice); Sierra Club Ex. 28 (Aff. of Mr. Franklin).

²⁸ PFD at 67.

²⁹ See Docket 46449, Order on Rehearing (Mar. 19, 2018) at 3, Findings of Fact ¶ 30E; *see also* Docket No. 46449, Tr. at 448:12–451:3 (Franklin cross) ("Q. [Sargent and Lundy's] analysis is -- looks at the various technological options for complying with the [MATS] rule. Is that correct? A. That's correct. Q. But you heard [SWEPCO witness Mark Becker] describe various different scenarios that SWEPCO evaluated at other SWEPCO units? A. Yes, I did. Yes. Q. And evaluated retrofit costs in a variety of variables. Natural gas prices? A. Right. Right. [...] Q. And you recall we spent some time going through that *detailed analysis*, and he produced several tables that have very detailed *demonstrations of the relative economics of the different options*? A. Yes. I recall that. Q. *Sargent and Lundy didn't -- that's not what's in that report, is it?* A. No. *That's not what Sargent and Lundy was asked to do.*) (emphasis added).

the notion that SWEPCO historically reviews or relies upon Cleco's economic studies before continuing to sink money into Dolet Hills is simply false.

Nor is the Commission's prudence determination in Docket No. 46449 dispositive. First, the costs at issue in that case and this one are entirely distinct. Second, a utility's obligation to analyze the prudence of maintain a generating unit is not a static or once-and-done responsibility. Instead, the utility and the Commission have an ongoing obligation to evaluate and ensure the continued prudence of the utility's continuing investment in any generation asset.³⁰ Neither SWEPCO's 2017 testimony nor the Commission's 2019 prudence determination excuse SWEPCO from its obligation to provide "*contemporaneous* documentation" that it conducted a reasoned investigation and analysis of all relevant factors and alternatives before continuing to invest in Dolet Hills.³¹ Simply put, the record makes clear that SWEPCO failed to meet its burden of demonstrating the prudence of its test-year expenditures at Dolet Hills, or that those expenditures were necessary to provide service to customers.

ii. The Commission should adjust the test year expenses for Dolet Hills to correspond to its imminent retirement.

Even if SWEPCO had demonstrated the prudence of some of its test year expenses at Dolet Hills (and it did not), the Commission should adjust those expenses downward to account for "known and measurable changes" to the utility's operations.³² Here, SWEPCO has

³⁰ *Application of El Paso Electric Company for Authority to Change Rates*, Docket No. 5700, 10 P.U.C. BULL 1071, 1984 WL 274081 at *27 (Oct. 26, 1984, on modification Dec. 7, 1984).

³¹ *Gulf States*, 841 S.W. 2d at 476 (emphasis added).

³² *Id.*; see also *Central Power & Light/Cities of Alice v. Pub. Util. Comm'n*, 36 S.W.3d 547, 563 (Tex.App.—Austin 2000, pet. denied) ("[T]he Commission's authority to allow post-test-year adjustments for 'known and measurable changes to historical test-year data' is discretionary.");

committed to operating Dolet Hills only in the peak demand season—June through September—and will permanently retire the plant in December 2021. Yet, the Company failed to evaluate any specific opportunities for reducing its capital and O&M spending at the plant to reflect its shortened useful life even though SWEPCO admitted that it would be “logical” to do so.³³ Where, as here, a utility has accelerated the retirement of a generation resource because it is no longer economical to operate, the utility should likewise reduce capital and O&M spending to reflect its shortened useful life.³⁴

The Proposal for Decision takes the view:

that it would be unreasonable to infer that the Dolet Hills retirement or seasonal operation automatically equals imprudence or unreasonableness in the test-year capital investment and O&M amounts presented by Mr. McMahon, let alone by any specific ratio or percentage of excessiveness.³⁵

Even putting aside that this language appears to place the burden on a party other than the utility (to show “imprudence or unreasonableness”)³⁶ to support that conclusion, the Proposal for Decision points to the same irrelevant evidence that it relied on to find that the Dolet Hills investments were prudent—namely, SWEPCO’s unsubstantiated assertions that those capital and

16 Tex. Admin. Code § 25.231(b) (“In computing an electric utility’s allowable expenses, only the electric utility’s historical test year expenses as adjusted for known and measurable changes will be considered.”).

³³ Tr. at 89:14-90:1 (Brice Cross) (May 19, 2021).

³⁴ *In re DTE Elec. Co.*, No. 349924, 2021 WL 743782, at *4 (Mich. Ct. App. Feb. 25, 2021) (concluding that continued capital and O&M investment in a power plant that was no longer economic to operate was imprudent).

³⁵ PFD at 68.

³⁶ Throughout, the Proposal for Decision places the burden of proof on a party other than the utility. Where the Proposal for Decision states “Nor is there anything inherently wrong with SWEPCO’s reliance on CLECO,” it should have instead inquired—but failed to—whether there was anything sound, reasonable, and prudent in SWEPCO’s reliance on another entity.

O&M costs were reasonable and necessary. But as discussed, there is no *documentation* in the record explaining those investments, analyzing alternatives, or supporting SWEPCO's conclusory assertions about their need. The Proposal for Decision also points to Mr. McMahon's testimony that SWEPCO "will deploy the appropriate level of capital to get those plants safely to the end of life,"³⁷ but inexplicably ignores his contradictory testimony that "ultimately, it's the operator's [Cleco's] decision on how to deploy that funding."³⁸ Again, despite SWEPCO witness McMahon's single passing and self-serving assurance that SWEPCO would spend only the money necessary to get Dolet Hills to the end of its life, the weight of the evidence makes clear that the Company did not actually play a direct role in making any of the test-year capital or O&M investment decisions at Dolet Hills.³⁹ Instead, it simply passively deferred those decisions to Cleco and now seek a Commission order passing those costs to customers. Accordingly, the Commission should reject the Proposal for Decision's recommendation to simply pass all of those costs to customers without any adjustment.

Where, as here, "it is apparent the test year data provides an inaccurate forecast" of future operations or expenses, "adjustments should be made so as to provide a reasonably accurate estimate of future operating conditions" and expenses, thereby ensuring just and reasonable rates for customers.⁴⁰ Here, SWEPCO seeks recovery of approximately \$14 million in test year capital

³⁷ PFD at 68.

³⁸ Tr. at 160:2-5.

³⁹ SWEPCO Ex. 7 (Direct Testimony of McMahon) at 5:16-18; Tr. at 159:10-12 (McMahon Cross) (May 19, 2021); *see also* Tr. at 84:22-25 (Brice Cross) (May 19, 2021) ("Cleco is the operator of the plant and would make those decisions."); Tr. at 160:4 (McMahon Cross) (May 19, 2021) ("it's the operator's decision on how to deploy that funding").

⁴⁰ *Id.*

and O&M expenses,⁴¹ even though SWEPCO will permanently retire Dolet Hills no later than December 2021, just two months after the Company's new base rates likely go into effect.⁴² Moreover, as a result of orders issued by the Louisiana and Arkansas Public Service Commissions, Cleco Power and SWEPCO may operate Dolet Hills *only* in the peak demand season—June through September—unless required by one of the independent system operators for reliability purposes.⁴³ Thus, as a practical and regulatory matter, Dolet Hills has already been

⁴¹ SWEPCO Ex. 1 (Application) at 3410, Schedule H-1.2c; Sierra Club Exhibit 1A (Direct Testimony of Glick) at 132-141 (exhibiting SWEPCO Response to CARD Request 1-16, Supplemental Attachment 2); *see also id.* at 012, Table 1.

⁴² Tr. at 70:19-22; 131:18-22 (Brice Cross) (May 19, 2021). As a practical matter, Dolet Hills will be functionally retired at the end of the peak demand season, in September 2021. *See* Tr. at 177:16-21 (McMahon Cross) (May 19, 2021) (Dolet Hills is currently operating only seasonally, or “June through September”); *see also* Tr. at 100:3-5 (Brice Cross) (May 19, 2021). The Louisiana Public Service Commission has entered an order requiring Cleco Power, the co-owner of Dolet Hills, to operate the plant only seasonally from June through September. *In re: Application of Cleco Corporate Holdings LLC and Cleco Power LLC for: (i) Authorizations, Waivers, and Regulatory Interpretations or Certain Provisions of LPSC Order No. U-33434-A; (ii) Authorization for Cleco Corporate Holdings LLC to Pledge its Ownership Interest in Cleco Power LLC; and (iii) Expedited Treatment*, Docket No. U-34794, 2019 WL 446985, Order at Commitment No. 59(v) (La.P.S.C. Jan. 31, 2019); *see also* CARD Ex. 11 (AEP 10Q For Quarterly Period Ending March 31, 2020) at 6 (“In January 2020, as part of the 2019 Arkansas Base Rate Case, management announced that the Dolet Hills Power Station was probable of abandonment and was to be retired by December 2026. In March 2020, management announced plans to accelerate the expected retirement date to the end of September 2021.”).

⁴³ Tr. at 70:19-22; 131:18-22 (Brice Cross) (May 19, 2021). As a practical matter, Dolet Hills will be retired at the end of the peak demand season, in September 2021. *See* Tr. at 177:16-21 (McMahon Cross) (May 19, 2021) (Dolet Hills is currently operating only seasonally, or “June through September”); *see also* Tr. at 100:3-5 (Brice Cross) (May 19, 2021). In fact, the Louisiana Public Service Commission has entered an order requiring Cleco Power, the co-owner of Dolet Hills, to operate the plant only seasonally from June through September. *In re: Application of Cleco Corporate Holdings LLC and Cleco Power LLC for: (i) Authorizations, Waivers, and Regulatory Interpretations or Certain Provisions of LPSC Order No. U-33434-A; (ii) Authorization for Cleco Corporate Holdings LLC to Pledge its Ownership Interest in Cleco Power LLC; and (iii) Expedited Treatment*, Docket No. U-34794, 2019 WL 446985, Order at Commitment No. 59(v) (La.P.S.C. Jan. 31, 2019); *see also* CARD Ex. 11 (AEP 10Q For Quarterly Period Ending March 31, 2020) at 6 (“In January 2020, as part of the 2019 Arkansas

mothballed. By ignoring that fact of Dolet Hills' certain retirement, the Proposal for Decision's recommended revenue requirement for Dolet Hills is unreasonably inflated since, starting in October 2021, there will be no significant capital or O&M costs for the plant.

Customers should not be required to pay costs that are clearly no longer necessary. As explained in Sierra Club's Initial Brief, to ensure just and reasonable customer rates, SWEPCO's test year expenses for Dolet Hills should be adjusted to account for the imminent retirement of the plant. At a minimum, the Company's test year expenses for Dolet Hills should be reduced by \$3.5 million (25% of the proposed test year spending), which represents the known and measurable reduction for the three months—October, November, and December—during which SWEPCO has committed not to operate the plant.⁴⁴

In sum, the record makes clear that SWEPCO failed to meet its burden of demonstrating the prudence of its test-year expenditures at Dolet Hills, or that they were necessary to provide service to customers. The Commission should find that SWEPCO failed to satisfy its burden of demonstrating the prudence of its proposed test year spending at Dolet Hills. At a minimum, the Commission should make clear that, once SWEPCO decided to accelerate the planned retirement of Dolet Hills from 2046 to 2021, the Company should have reduced capital and O&M spending at the plant to reflect its shortened useful life.

Base Rate Case, management announced that the Dolet Hills Power Station was probable of abandonment and was to be retired by December 2026. In March 2020, management announced plans to accelerate the expected retirement date to the end of September 2021.”).

⁴⁴ Tr. at 176:1-6 (McMahon Cross) (May 19, 2021) (acknowledging that “[m]anagement . . . revised the useful life of Dolet Hills Power Station to September 2021”); Tr. at 135:24-136:10 (Baird Cross) (May 19, 2021) (Dolet Hills will be operated seasonally and cease to operate for the season in September 2021.).

b. Flint Creek and Welsh Test Year Investment

i. SWEPCO did not meet its burden on Flint Creek and Welsh test year spending, and therefore these costs should be disallowed.

In this proceeding, SWEPCO proposes, as part of its test year spending, \$9.8 million of O&M and \$3.4 million in capital spending proposed for Flint Creek, and \$28.3 million of O&M and \$6.8 million in capital spending for Welsh.⁴⁵ The Proposal for Decision held that SWEPCO need not submit evidence demonstrating the prudence of those investments because, according to the Proposal for Decision, SWEPCO studied the economics of these units in 2011, a full decade ago. That holding was in error. Especially at a time when SWEPCO is imminently retiring its lignite units and also seeking a large rate increase, the Company must be required to demonstrate the prudence of maintaining Flint Creek and Welsh in operation. The Commission should reject the Proposal for Decision and confirm that SWEPCO, the regulated utility, bears the burden of demonstrating that maintaining Flint Creek and Welsh in operation is in the public interest and benefits customers—or the cost of operating the Flint Creek and Welsh units must be disallowed.

Instead of holding the Company to its burden of proof, the Proposal for Decision approves all of SWEPCO's proposed test year spending at Flint Creek and Welsh without any evidence supporting approval.⁴⁶ The Commission should exclude the proposed test year spending for both the Flint Creek and Welsh plants for two basic reasons. First, SWEPCO has offered no economic analysis supporting the continued operation of, or continued capital or

⁴⁵ See SWEPCO Ex. 1 (Application) at 3406, 3408, Schedule H-1.2b; *see also* Sierra Club Exhibit 1A (Direct Testimony of Glick) at 132-141 (exhibiting SWEPCO Response to CARD Request 1-16, Supplemental Attachment 2); *see also id.* at 012, Table 1.

⁴⁶ See PFD at 69-74.

O&M investment in, these plants. The ALJs primary rationale for excusing SWEPCO from this showing—that the Company studied the economics of these units in the last rate case—is plainly in error because the referenced studies occurred in 2011, a full decade ago, and therefore are not reasonable evidence of the economics of these plants during the test year (absent an additional showing, never made by SWEPCO, that energy market conditions and power plant costs have not changed since 2011). For comparison, in the 2018 decision on SWEPCO’s “Wind Catcher” wind project, the Proposal for Decision in that proceeding found that SWEPCO’s fundamentals forecast which was less than two years old at the time was “on an out-of-date forecast.”⁴⁷ Here, the Proposal for Decision relies on forecasts that are over five times as stale. Simply put, SWEPCO has not met its burden to show that maintaining these plants in service is in customers’ interests. In approving the spending for these plants, the Proposal for Decision refuses to require SWEPCO to provide any evidence relevant to whether these large generating units should remain in operation or not. That refusal to require evidence is an error.

Second, while SWEPCO chose to present no evidence of the economics of operating Flint Creek and Welsh through and beyond the test year (and the ALJs excused SWEPCO from this obligation), Sierra Club did. Relying on SWEPCO’s own data (primarily, SWEPCO’s projections of costs for these plants, as well as its energy and capacity market forecasts), Sierra Club witness Glick shows that these plants have been and will be for the next decade, high cost

⁴⁷ *Application of Sw. Elec. Power Co. for Certificate of Convenience & Necessity Authorization & Related Relief for the Wind Catcher Energy Connection Project in Oklahoma*, No. 473-17-5481, 2018 WL 3963744, at *3 (Aug. 13, 2018). The Commission itself observed that “[t]he bulk of the evidence in this proceeding casts doubt on the assumptions SWEPCO, who bears the burden of proof, used to determine that benefits to consumers are probable.” *Id.* at *8 (Aug. 13, 2018).

resources compared to alternatives. While the Commission need not reach this question—and instead should disallow these costs on SWEPCO’s failure to meet the burden of proof alone—the Proposal for Decision erred by rejecting Ms. Glick’s competent testimony regarding the economics of Flint Creek and Welsh. The Proposal for Decision disregarded Ms. Glick’s analysis because she used just two alternatives for capacity replacement—SWEPCO’s capacity market price and the SPP’s Cost of New Entry (“CONE”)—and a SWEPCO witness, Mr. Becker, testified that more alternatives should have been studied like, as he claimed, SWEPCO had done in the previous rate case. But Mr. Becker’s testimony is false, as SWEPCO only studied one replacement alternative in the previous case (a new gas plant) and the Proposal for Decision erred by relying on his testimony.

1. The ALJs approved Flint Creek and Welsh test year spending without any evidence that maintaining these plants in operation benefits Texas customers.

The ALJs took the view that it is unreasonable to ask a regulated utility to justify the spending at its generation fleet in a general rate case. SWEPCO’s application and direct testimonies do not address the economics of Flint Creek and Welsh. The Company performed no modeling, provided no unit disposition study, and submitted no quantified analysis purporting to demonstrate the value of continued retention of these plants.⁴⁸ Even after Sierra Club challenged the ongoing spending at these plants, the Company’s rebuttal testimonies likewise do not support the continued operation of Flint Creek or Welsh (though SWEPCO’s witnesses criticized Sierra Club’s evidence). SWEPCO indisputably did not offer evidence of the economics of these plants,

⁴⁸ See generally SWEPCO Ex. 1 and SWEPCO Ex. 7 (Direct Testimony of McMahon).

but “[t]he ALJs disagree that SWEPCO was required to make any such showing in the first instance.”⁴⁹

The Proposal for Decision is in error. While acknowledging “the general concept that SWEPCO must prove that ‘every dollar of its revenue requirement is reasonable and necessary,’”⁵⁰ the Proposal for Decision concludes that no such showing is actually required, relying on a straw person legal premise:

Sierra Club points to no authority for its premise, which would imply that a utility must, as a component of its *prima facie* showing in every rate case, continually re-justify the prudence of the entire generation fleet that the Commission has previously deemed prudent and placed in rates.⁵¹

The Proposal for Decision goes on to find that because SWEPCO presented retire-or-retrofit studies for Flint Creek and Welsh in the last rate case, it is excused for the Company’s lack of such evidence in this case:

Given this historical context—which, contrary to Sierra Club’s assertions, is not “irrelevant”—SWEPCO has made a sufficient initial showing of the prudence and reasonableness of its test-year capital investment and O&M at Flint Creek and Welsh.⁵²

This reasoning is in error for several reasons. First, Sierra Club is not challenging any costs that have ever been approved by the Commission before or asking SWEPCO to “re-justify” any approved costs. Sierra Club is not challenging one dollar that the Commission has previously approved, Sierra Club is challenging the test year O&M and new capital costs proposed in this

⁴⁹ PFD at 69.

⁵⁰ PFD at 69 (citing Sierra Club Initial Brief at 8 (citing PURA § 36.006(1))).

⁵¹ PFD at 69-70.

⁵² PFD at 70 (internal footnotes omitted).

case.⁵³ The Commission has never ruled on the test year spending at issue here, the costs and expenses for the 12 months ending with March 31, 2020.

Second, Sierra Club does not ask that every utility justify the retention of every generating unit in every rate case. Instead, Sierra Club argued that SWEPCO should be required to justify maintaining Flint Creek and Welsh in operation, given the facts of this record, which include the declining utilization of these units since 2016, SWEPCO's own forecasts that show that these plants are expected to operate less and less over time, and the fact that SWEPCO has studied the economics of Dolet Hills and Pirkey (determining their near-term retirement is prudent) but has not submitted any relevant evidence of the current or projected economics of Flint Creek or Welsh. As a result, it is impossible to evaluate whether the Company's test-year investments in the continued operation of the plants was prudent based on its own analysis.

Third, perhaps most important, the Proposal for Decision's reliance on "historical context" to justify excusing SWEPCO from having to justify its spending was error. In excusing SWEPCO's failure to produce any evidence of the ongoing value of current Flint Creek and Welsh, the Proposal for Decision points to the evidence that SWEPCO submitted in the last rate case and found this showing "sufficient."⁵⁴ But, left unstated by the Proposal for Decision, the unit disposition studies that SWEPCO submitted in the last rate case were performed during 2011.⁵⁵ The Proposal for Decision is simply wrong to credit decade-old retirement studies as

⁵³ See SWEPCO Ex. 1 (Application) at 3406, 3408, Schedule H-1.2b; *see also* Sierra Club Exhibit 1A (Direct Testimony of Glick) at 132-141 (exhibiting SWEPCO Response to CARD Request 1-16, Supplemental Attachment 2); *see also id.* at 012, Table 1.

⁵⁴ PFD at 70.

⁵⁵ *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at Finding of Fact ("FOF") No. 42 (Mar. 19, 2018) ("SWEPCO performed a series of

evidence of the ongoing value of Flint Creek and Welsh for the current test year. The Commission cannot rely on a decade old study to justify ongoing spending at these plants absent a further finding that energy market conditions, the costs of Flint Creek and Welsh, and the costs of alternative resources have not changed in the last decade. The Proposal for Decision makes no such finding. As one demonstration of the error in relying on SWEPCO's decade-old data, in its 2011 study, SWEPCO found that retrofitting Pirkey with a plan to operate the plant through the 2040s, as opposed to retiring it, was lower cost in all 15 scenarios studied.⁵⁶ But today the Company plans to retire Pirkey in 2023, showing that 2011 studies are not evidence of going forward value for Pirkey. Whether Flint Creek or Welsh has ongoing value today based on a SWEPCO study is unknown because the Company did not provide any such evidence to this Commission.

Last, the Proposal for Decision appears to have given SWEPCO some credit for identifying the amount of test year spending at each of these plants and for the processes that the company uses to set the level of O&M at each plant.⁵⁷ As explained above in the Dolet Hills test year spending section, simply identifying the amount of spending alone is not evidence of the prudence of such spending. Sierra Club is not challenging the *level* of O&M spending for Flint

economic analyses of unit-disposition alternatives at the Welsh, Flint Creek, and Pirkey plants. The series of monthly economic analyses, beginning in January 2011 through May 2011 (monthly economic analyses), provided the economic comparisons of those alternatives that aided SWEPCO in deciding the future disposition of those units.”).

⁵⁶ *Id.*, Docket No. 46449, FOF No. 47 (“In the monthly economic analyses, under all 15 commodity price assumptions studied, the Pirkey retrofit was projected to provide savings over retirement.”).

⁵⁷ *See* PFD at 69 (“Sierra Club posits that SWEPCO’s initial burden includes not only presenting the evidence regarding capital spending and O&M described in the preceding section.”).

Creek or Welsh, but whether *any* of this O&M is prudent given the lack of showing that the plants should be maintained in operation at all. To the extent the Proposal for Decision credits SWEPCO with this evidence, that is an error as well.

The Commission should deny SWEPCO's proposed test year spending at the Flint Creek and Welsh plants because the Company has not provided any empirical evidence supporting the continued investment of capital and O&M expenses at these plants. Despite seeking approval for tens of millions of dollars at these two plants in this case, SWEPCO has not provided a unit disposition study, net present value calculation, or any comparable quantification purporting to show that customers would benefit from the retention of Flint Creek or Welsh.⁵⁸ The phrasing of the Proposal for Decision's finding of fact on this issue confirms that the burden of proof was placed on a party other than the regulated utility:

The legally competent, credible evidence presented in this case **does not show** that SWEPCO's capital investment at Flint Creek, Welsh, and Dolet Hills was **imprudent**, or that the O&M expenses were **unreasonable or unnecessary**.⁵⁹

Sierra Club disputes this finding, but in any case, it incorrectly relieves SWEPCO of its burden of proof. To approve these costs to be charged to regulated utility customers, the Commission must make affirmative findings that the spending is reasonable, prudent, and necessary (not that an intervening party has failed to prove the negative). In any event, the rationale for declining to require that SWEPCO justify "every dollar of its revenue requirement is reasonable and

⁵⁸ See Sierra Club Exhibit 1A (Direct Testimony of Glick) at 042; *see also* Sierra Club Offer of Proof Ex. 1 (Unredacted Highly Sensitive Direct Testimony and Exhibits of Devi Glick (under seal) (filed with PUCT March 31, 2021)) at 031-040; *see also id.* at 143 (exhibiting SWEPCO Response to Sierra Club Request 1-5, HS Attachment 6).

⁵⁹ See PFD at Proposed FOF 33 (emphasis added).

necessary”⁶⁰ in the Proposal for Decision was based on erroneous reasoning and should be rejected. The Commission should apply the appropriate standard and remove these Flint Creek and Welsh costs from customers’ rates.

2. Sierra Club presented evidence that supports disallowing the test year capital and O&M spending at the Flint Creek and Welsh units.

While the Commission need not address this issue—because the Company failed to meet its burden of proof—Sierra Club presented evidence demonstrating that continued operation of the Flint Creek and Welsh units is likely to harm Texas customers. This evidence, provided through the testimony of Sierra Club witness Devi Glick, supports disallowing the Company’s proposed test year spending at these plants. The Proposal for Decision erred by not crediting Sierra Club’s evidence.⁶¹ As explained below, the Proposal for Decision wrongly credited SWEPCO testimony that the 2011 retirement studies had considered more than one alternative to maintain the coal units—in fact, the 2011 studies considered just one alternative, a new gas plant, and the Proposal For Decision was wrong to disregard Ms. Glick’s analysis for not considering more than two capacity alternatives.

Unlike SWEPCO, Sierra Club, through the Direct Testimony of Devi Glick, submitted reliable evidence that addresses the overall value of the Flint Creek and Welsh plants and the imprudence of the Company’s continued investment in them. Using SWEPCO’s own data projections, Ms. Glick demonstrated that Flint Creek and Welsh, when they operate at all over the next ten years, will do so as high-cost peaking units, and that customers would be better off if

⁶⁰ PURA § 36.006(1).

⁶¹ PFD at 74.

SWEPCO retired both plants and replaced them with alternative resources. Specifically, Ms. Glick balanced all of the costs, fixed and variable, of continuing to operate these units against all the revenues they earn in the market.⁶² Because SWEPCO does not receive capacity payments for its generation units, and to provide an apples-to-apples comparison, Ms. Glick credited the capacity value of the units at SWEPCO's capacity market forecast value, with a sensitivity at SPP's CONE, which SWEPCO admits is a reasonable replacement cost assumption.⁶³ Ms. Glick's calculations demonstrate that Flint Creek and Welsh consistently have and will cost customers more to operate than alternative resources.

At Flint Creek, SWEPCO incurred net negative revenues compared to a market proxy for energy and capacity on a forward-looking basis in every year over the past six years (2015–2020), totaling \$153 million (2020\$).⁶⁴ This works out to an average of \$25 million in net losses relative to the market every year. Even excluding the \$114 million associated with the installation of flue-gas desulfurization, SWEPCO's share of the unit incurred \$35 million (2020\$) in net negative revenues for an average of \$6 million in losses annually.⁶⁵ At the Welsh plant, SWEPCO incurred net negative revenues compared to a market proxy for energy and capacity on a forward-looking basis over the years 2015–2020 totaling \$144 million (2020\$).⁶⁶

⁶² Sierra Club Ex. 1A (Direct Testimony of Glick) at 017-019.

⁶³ Tr. at 743:2-11 (Becker Rebuttal) (May 21, 2021).

⁶⁴ Sierra Club Ex. 1A (Direct Testimony of Glick) at 015.

⁶⁵ *Id.*

⁶⁶ *Id.* at 016.

This works out to an average of \$24 million in losses each year. Customers should not pay for such high-cost peaking power plants, when more affordable alternatives are available.⁶⁷

Based on the Company's own data, SWEPCO expects Flint Creek and Welsh to continue to perform poorly over the next decade. The Company is forecasting capacity factors that are even lower than those experienced during recent years, with neither plant projected to achieve a 30 percent annual capacity factor for any year for the rest of the decade.⁶⁸ Again, relying on the Company's own projected data, Ms. Glick found that SWEPCO will incur net losses (total costs versus total value, including capacity value at SWEPCO's projected capacity price) at Flint Creek of \$161 million (present value basis) over the next decade or an average of \$21 million per year (2020\$).⁶⁹ Even crediting Flint Creek's capacity value at the conservative capacity price assumption of CONE—essentially the cost of building a new gas plant—Flint Creek will have negative value for customers over the next decade, totaling \$27 million in present value or \$3.5 million annually (2020\$).⁷⁰ Similarly, relying on the Company's projected data, Ms. Glick found that Welsh units 1 and 3 are projected to incur net losses of \$266 million over the next decade (on a present value basis) or an average of \$35 million per year (2020\$).⁷¹ Simply put, the only empirical data in the record that addresses the overall value of the Flint Creek and Welsh plants—the testimony of Ms. Glick that relies on SWEPCO's own projections—shows that

⁶⁷ *Id.*

⁶⁸ *Id.* at 020-021.

⁶⁹ *Id.* at 022.

⁷⁰ *Id.*

⁷¹ *Id.* at 024. Unlike Flint Creek, Welsh has marginally positive net value when capacity is credit at SPP's CONE calculation, but capacity should be available at much lower cost. *Id.*

continuing to operate these plants is an imprudent decision and that Texas customers will be harmed by their continued operation.

After reciting Ms. Glick's findings and SWEPCO's rebuttal testimony, the Proposal for Decision determines that Ms. Glick's testimony is not competent evidence in one paragraph of reasoning:

Yet Sierra Club does not bridge a more fundamental disconnect between Ms. Glick's assumption of same-year expensing of fixed and capital costs and the manner in which SWEPCO actually has been expensing those investments. So long as that gap remains, Ms. Glick's assertions of historical or projected losses amount to mere unsupported conclusions rather than competent evidence of losses. Nor should the witness's analysis be considered a probative unit-disposition analysis merely by virtue of incorporating some capacity value. As Mr. Becker explained, a proper unit-disposition analysis, such as that approved by the Commission in Docket No. 46449, would ordinarily entail consideration of multiple alternative resources and not merely a single resource or CONE input.⁷²

The Proposal for Decision is wrong on both points.

First, the Proposal for Decision was wrong to rely on Mr. Becker's description of the unit disposition in the previous rate case to make an unfavorable comparison to Ms. Glick's analysis.

In the previous rate case, SWEPCO's retirement studies considered just a single replacement resource, as Mr. Becker testified:

I rebut Mr. Woodruff's claim that SWEPCO acted unreasonably in its Early 2011 unit disposition analyses by considering only new combined-cycle units as replacement options should Welsh unit(s), Flint Creek, and Pirkey be retired rather than retrofit.⁷³

Many things have changed since 2011 when SWEPCO last studied the economics of Welsh and Flint Creek, including Mr. Becker's view of how to construct a retirement study. The Proposal

⁷² PFD at 74 (internal footnotes omitted).

⁷³ Docket No. 46449, Rebuttal Testimony of Mark A. Becker at 3 (May 19, 2017).

for Decision erred by crediting his testimony in this case that SWEPCO had studied multiple alternatives in the 2011 studies. That was simply not true.

Second, Ms. Glick's analysis *did* consider more than one single resource input to compare the value of Flint Creek and Welsh. For energy, Ms. Glick compared the costs of these two plants to SPP energy market prices (historic analysis) and SWEPCO's forecast of SPP energy market prices (the projection analysis).⁷⁴ The SPP energy market is a diverse construct that reflects many different resources. For capacity, Ms. Glick compared the costs to operate Flint Creek and Welsh to a replacement that was valued at SWEPCO's capacity price projection, which is also a diverse market that reflects many resources.⁷⁵ Ms. Glick further compared the costs of these plants to SPP's CONE calculation which is essentially the cost of building new gas-burning generation.⁷⁶ Both SWEPCO's own capacity price projection and SPP's calculation were reasonable replacement analysis (and comparable to SWEPCO's use of a single gas resource in its 2011 studies), especially where SWEPCO submitted no other evidence of capacity costs. Further, the ALJs failed to make a finding implicit in their reasoning: that SWEPCO faces capacity costs to replace Flint Creek and Welsh that are higher than its own capacity forecast and higher than CONE. SWEPCO never presented such evidence, and the ALJs made no such finding.

Third, the Proposal for Decision incorrectly credits SWEPCO's concern with Ms. Glick's assumption that all fixed and capital costs are expensed in the year that those costs are incurred,

⁷⁴ Direct Testimony of Glick at 015.

⁷⁵ *Id.*

⁷⁶ *Id.*

rather than depreciating those costs over the life of the unit.⁷⁷ Although SWEPCO assumes that Flint Creek and Welsh will operate until 2038, and 2042, respectively, Ms. Glick assumed only a ten-year useful life. But that reduced useful life is not unreasonable for Welsh in light of SWEPCO's announcement that it would retire or convert that plant to gas in 2028.⁷⁸ Further, in light of the declining economics at Flint Creek and coal generation generally,⁷⁹ there is little reason to believe that the plant will operate beyond 2030. In fact, five of SWEPCO's seven coal-burning electric generating units are now slated to retire or cease burning coal before their originally projected end of life, with each of those plants accelerating their retirement dates by a decade or more.⁸⁰ In light of Mr. Becker's admission that a power plant should generally earn enough revenue to cover all of its capital and fixed costs,⁸¹ his acknowledgment that a power plant cannot earn revenue in the energy market once it ceases operation,⁸² and the likelihood that both Flint Creek and Welsh will retire before the late 2030s or early 2040s (as the Company currently purports to assume), Ms. Glick's analysis presents a reasonable forecast of the forward-going economics of those plants. The Proposal for Decision is wrong not to credit her analysis

⁷⁷ See SWEPCO Ex. 48 (Rebuttal Testimony of Becker) at 5.

⁷⁸ See Sierra Club Exhibit 1A (Direct Testimony of Glick) at 010; TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 12.

⁷⁹ TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 11 (showing decline in AEP's generation from 70% coal in 2005 to 44% in 2021 to a projected 22% in 2030).

⁸⁰ Sierra Club Exhibit 1A (Direct Testimony of Glick) at 010; TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 12; SWEPCO Ex. 7 (Direct Testimony of McMahon) at 7, Table 2.

⁸¹ Tr. at 705:15-20 (Becker Rebuttal) (May 21, 2021).

⁸² Tr. at 720:13-24 (Becker Rebuttal) (May 21, 2021).

and rely solely on SWEPCO's now-unsupported theory that these plants will operate for decades more.

The Proposal for Decision failed to credit Ms. Glick's testimony, which again reflects SWEPCO's own historic data and own projections, and the Commission should, to the extent it reaches the question, find instead that Ms. Glick has provided competent evidence related to the economics of Flint Creek and Welsh.

c. Additional Investment

Although SWEPCO has indisputably incurred costs during the test year to comply with the EPA's coal ash and wastewater regulations, known as the Effluent Limitations Guidelines and Coal Combustion Residuals ("ELG/CCR"), the ALJs refused to examine the prudence of that investment decision because the Company chose not to include those costs in "the rates to be approved in this proceeding."⁸³ Instead, the ALJs concluded that any review of the ELG/CCR compliance decision will occur in a future proceeding, after the Company has completed the project and seeks to recover those costs from customers.⁸⁴ The Proposal for Decision similarly declines to evaluate SWEPCO's decision to convert the Welsh power plant to burn gas as a means of complying with the CCR/ELG rules, or to direct the Company to demonstrate the prudence of that conversion before committing ratepayers to that investment.

Sierra Club takes exception to those holdings, and the ALJs' decision to decline to review the prudence of SWEPCO's resource planning practices, especially in light of the Company's

⁸³ PFD at 75.

⁸⁴ PFD at 75 (quoting SOAH Order No. 12 at 3).

history of investing in significant environmental compliance retrofits only to almost immediately retire those generation assets, forcing customers to bear significant stranded costs. The Commission should exercise its broad authority to review SWEPCO's resource planning decisions. First, SWEPCO does not dispute that it has already decided to invest another \$26.8 million retrofitting the increasingly-uneconomic Flint Creek coal plant to comply with the ELG/CCR rules, or that it has already incurred costs retrofitting the plant, and there is no dispute that SWEPCO will ultimately seek to recover those costs from ratepayers.⁸⁵ Those costs arise out of the same facts and directly affect the analysis and assumptions that are at issue in this case, and therefore the Commission has authority to consider them here. The Commission should remand and direct the ALJs to conduct further proceedings to evaluate the prudence of those investment decisions. Second, the Commission should exercise its discretion to require SWEPCO to demonstrate the prudence of its decision to convert Welsh to burn gas *before* "harm[ing] customers and saddl[ing] them with paying back the costs of stranded assets in the future."⁸⁶

i. There is no dispute that SWEPCO has made a final decision to incur avoidable CCR/ELG costs at Flint Creek and that decision is ripe for Commission review.

Although SWEPCO chose not to include its test-year ELG/CCR expenses in rates in this proceeding, there is no dispute that the Company has conclusively decided to invest

⁸⁵ SWEPCO's rate package indicates that the Company plans to spend \$26.8 million retrofitting Flint Creek, and has already expended \$1,282,613 on the project. *See* Schedule H-5.3b at 7 (line item "FLC U1 DBA Conver (CCR/ELG)" refers to Flint Creek dry bottom ash conversion Coal Combustion Residual/Effluent Limitations Guidelines).

⁸⁶ Sierra Club Initial Brief at 27.

approximately \$26.8 million in retrofitting the plant to comply with EPA’s regulations.⁸⁷ In fact, SWEPCO expended \$1,282,613 on the project to convert a dry bottom ash pond during the test year.⁸⁸ SWEPCO and its customers could avoid those compliance costs, if the utility committed to cease burning coal at that power plant by 2028.⁸⁹ Despite SWEPCO’s history of ill-conceived environmental compliance investments in soon-to-be stranded generation assets, the Proposal for Decision recommends that the Commission ignore the Flint Creek retrofit decision and allow SWEPCO to force ratepayers to bear another \$26.8 million in avoidable costs to continue operating a power plant, which, as Ms. Glick’s analysis demonstrates, is uneconomic to operate and should be replaced.

That recommendation is erroneous and the Commission plainly has authority to review the prudence of those costs in this case, before those costs are incurred.⁹⁰ Moreover, in establishing just and reasonable rates, the Commission also has broad discretion to consider all

⁸⁷ SWEPCO’s rate package indicates that the Company plans to spend \$26.8 million retrofitting Flint Creek, and has already expended \$1,282,613 on the project. *See* Schedule H-5.3b at 7 (line item “FLC U1 DBA Conver (CCR/ELG)” refers to Flint Creek dry bottom ash conversion Coal Combustion Residual/Effluent Limitations Guidelines).

⁸⁸ *See* Schedule H-5.3b at 7 (line item “FLC U1 DBA Conver (CCR/ELG)” refers to Flint Creek dry bottom ash conversion Coal Combustion Residual/Effluent Limitations Guidelines).

⁸⁹ U.S. EPA, Steam Electric Reconsideration Rule, 85 Fed. Reg. 64,650, 64,661, 64,680 (Oct. 13, 2020); 40 CFR § 257.103(f); Sierra Club Ex. 1A (Direct Testimony of Glick) at 127-128, (exhibiting SWEPCO Response to Sierra Club Request 3-2(d)-(e)).

⁹⁰ PURA § 14.001; *see also Reliant Energy, Inc. v. Pub. Util. Comm’n of Tex.*, 153 S.W.3d 174, 193 (Tex. App. 2004) (Section 16(a) does state the PUC’s power “to do all things, whether specifically designated by this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction . . . this Court has recognized that the Commission has the power to control its own docket”), citing *City of El Paso v. Pub. Util. Comm’n*, 839 S.W.2d 895, 926 (Tex. App. Austin 1992), *rev’d in part on other grounds*, 883 S.W.2d 179 (Tex. 1994).

costs and investments that arise out of the same facts or utility decisions at issue in the case.⁹¹ As discussed, SWEPCO and the Commission have continuing obligations to monitor the prudence of continuing to invest in, and operate, generation assets. The consideration of the costs should be conducted in further proceedings to establish whether SWEPCO's decision to incur these costs is prudent. By recommending that the Commission wait until the Flint Creek retrofits construction is fully completed to evaluate the prudence of that investment, the Proposal for Decision creates a higher risk that customers will be saddled with costs that the Commission might later deem imprudent (and could still be avoided if addressed in the present case).⁹² In a similar context for an AEP plant in West Virginia, the Kentucky Commission did not wait to review this ELG compliance decision, and instead rejected AEP's request for ELG spending at the Mitchell coal plant.⁹³ The Commission should do the same here. Again, there is no dispute that if the Company were to choose to cease burning coal at Flint Creek by 2028, it could avoid

⁹¹ *Coalition of Cities for Affordable Utility Rates*, 798 S.W.2d at 565.

⁹² *Pub. Util. Comm'n of Tex. v. Tex. Indus. Energy Consumers*, No. 18-1061, 2021 WL 1148227, at *9 (Tex. Mar. 26, 2021).

⁹³ *In the Matter of: Electronic Application of Kentucky Power Company For Approval of a Certificate of Public Convenience and Necessity For Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets*, Docket No. 2021-00004 (July 15, 2021). (The Kentucky Commission held that Kentucky Power Company did not provide sufficient evidence that it reviewed reasonable alternatives or that the ELG Rule project was reasonable and cost effective. In particular, the Kentucky Commission found that Kentucky Power Company's "modeling assumptions significantly overstated the projected cost of other generation resources," and failed to properly evaluate the costs of future environmental regulations, and therefore "skews the outcome of the analysis" to "create[] the appearance that the ELG project is more cost-effective than the alternatives." *Id.* at 21-22).

incurring at least \$17 million of these retrofit costs.⁹⁴ And there is no dispute that when the Company completes the CCR/ELG retrofits, it will seek to recover those costs from Texas ratepayers, absent intervention from this Commission.

Given SWEPCO's recent history of making significant environmental capital expenditures at its solid fuel units, and then rapidly retiring them soon after, Commission oversight of SWEPCO's Flint Creek investment decisions is warranted. To protect ratepayers from unnecessary costs, the Commission should exercise its broad authority to remand the Proposal for Decision, and direct the ALJs to conduct further proceedings to evaluate the prudence of SWEPCO's retrofit decision.⁹⁵

ii. SWEPCO's decision to convert Welsh to gas similarly warrants additional scrutiny.

The Proposal for Decision similarly recommends that the Commission abstain from exercising any oversight of SWEPCO's decision to convert Welsh to gas.⁹⁶ With the Welsh retrofit, however, the Commission has an opportunity to avoid imposing unnecessary costs on ratepayers by requiring SWEPCO to evaluate the prudence of the Welsh retrofit and obtain Commission approval before those costs are incurred, and before the Commission is required to

⁹⁴ See, e.g., SWEPCO Resp. to Sierra Club 3-2, included as Exhibit DG-3 to Direct Testimony of Devi Glick.

⁹⁵ PURA § 14.001; see also *Reliant Energy, Inc. v. Pub. Util. Comm'n of Tex.*, 153 S.W.3d 174, 193 (Tex. App. 2004) (Section 16(a) does state the PUC's power "to do all things, whether specifically designated by this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction . . . this Court has recognized that the Commission has the power to control its own docket"), citing *City of El Paso v. Pub. Util. Comm'n*, 839 S.W.2d 895, 926 (Tex. App. Austin 1992), *rev'd in part on other grounds*, 883 S.W.2d 179 (Tex. 1994).

⁹⁶ PFD at 76.

decide between threatening a utility's financial position with a disallowance or requiring customers to bear the risk of additional stranded assets.

Requiring SWEPCO to demonstrate the prudence of the Welsh conversion before committing to the project is also consistent with the Commission's well-established preference for contemporaneous evidence of power plant decision-making.⁹⁷ SWEPCO has historically made decisions to incur significant costs at its coal-burning units and sought after-the-fact approval from the Commission, often with scant documentation of its contemporaneous decision-making.⁹⁸ SWEPCO's recent history of undertaking costly environmental retrofits and then retiring units soon after⁹⁹ suggests that a more rigorous and proactive review of SWEPCO's resource planning is warranted. Without such a review, there is a higher risk that SWEPCO

⁹⁷ See *Tex. Indus. Energy Consumers v. Pub. Util. Comm'n of Texas*, 608 S.W.3d 817, 820-824 (Tex. App. 2018) (In a case involving the prudence of construction of SWEPCO's Turk coal-burning plant, a panel of administrative law judges found that SWEPCO failed to monitor the economic feasibility of the plant during the construction and that the Company should have stopped construction. Further evidence showed that canceling the project mid-construction would have saved customers money. And the "Commission agreed that SWEPCO had no processes to monitor the changing economics of the project and, consequently, was unable to present 'contemporaneous evidence to support its decision-making process' regarding continued construction of the Turk Plant."), rev'd and remanded, *Pub. Util. Comm'n of Tex. v. Tex. Indus. Energy Consumers*, 620 S.W.3d 418, 422 (Tex. 2021) (reversed on other grounds).

⁹⁸ See *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Proposal for Decision at 44 (Sept. 22, 2017) ("In this case the ALJs find that the contemporaneous documentation is inadequate to show reasonable action by a utility manager[.]"). In its Order on Rehearing, at 3-5, the Commission reversed the ALJs on the ultimate conclusion of SWEPCO's prudence showing on the contemporaneous evidence standard, though it did not rely on any of SWEPCO's own contemporaneous documentation in reaching that holding. *Id.*

⁹⁹ *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at FOF19 (Mar. 19, 2018). See also, *Sierra Club Ex. 9*. Three years ago, SWEPCO obtained Commission approval to charge customers approximately \$700 million to install pollution controls on five coal-burning plants forcing customers to pay million for retrofits that will be stranded before the end of their useful lives.

customers will be stuck with additional and avoidable costs as rate cases are the sole forum by which the Commission regulates an electric utility's generation planning. The Commission should exercise its broad discretion and require the Company to provide an analysis, before embarking on any conversion investment, that evaluates and compares the cost of converting the plant to operate on gas versus retiring the plant and investing in alternatives for providing electric service to its customers. Such an approach is plainly consistent with the Commission's authority to protect ratepayers from unnecessary and avoidable costs.¹⁰⁰

XIV. CONCLUSION

For these reasons, the Commission should find:

1. SWEPCO has failed to meet its burden for approval of O&M and capital maintenance costs for Dolet Hills, and disallow the approximately \$14 million in test-year capital and O&M spending at Dolet Hills. At a minimum, the Company's test year expenses for Dolet Hills should be reduced by \$3.5 million, which represents the known and measurable reduction for the costs that SWEPCO will not incur as a result of its decision to retire Dolet Hills at the end of the peak demand season in 2021.
2. SWEPCO has failed to meet its burden for approval of test year O&M and capital maintenance costs for the Flint Creek and Welsh plants as the Company presented no empirical evidence demonstrating that customers benefit from the continued operation of

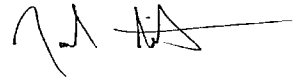
¹⁰⁰ PURA § 14.001; *see also Reliant Energy, Inc. v. Pub. Util. Comm'n of Tex.*, 153 S.W.3d 174, 193 (Tex. App. 2004) (Section 16(a) does state the PUC's power "to do all things, whether specifically designated by this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction . . . this Court has recognized that the Commission has the power to control its own docket"), citing *City of El Paso v. Pub. Util. Comm'n*, 839 S.W.2d 895, 926 (Tex. App. Austin 1992), *rev'd in part on other grounds*, 883 S.W.2d 179 (Tex. 1994).

these plants. Thus, the Commission should disallow the \$9.8 million of O&M and \$3.4 million in capital spending proposed for Flint Creek, and the \$28.3 million of O&M and \$6.8 million in capital spending for Welsh included in the test year.

3. The Commission should reverse the Proposal for Decision, and direct the ALJs to conduct further proceedings to evaluate the prudence of SWEPCO's decision to retrofit Flint Creek to incur the ELG/CCR costs was prudent.
4. The Commission should exercise this authority for the benefit of customers by amending the Proposal for Decision and ordering the Company to present robust analysis for any conversion of the Welsh plant before those costs are incurred.

Dated this 7th day of October, 2021.

Respectfully submitted,

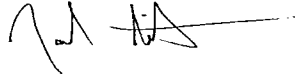


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CERTIFICATE OF SERVICE

I, Joshua Smith, certify that a copy of the foregoing Sierra Club submission was served upon all parties of record in this proceeding on October 7, 2021, by electronic mail, as permitted by the presiding officer.

A handwritten signature in black ink, appearing to read 'Joshua Smith', is positioned above a horizontal line.

Joshua Smith
Sierra Club Environmental Law Program